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CONSTITUTIONS AND DEMOCRATIC CONSOLIDATION
BRAZIL IN COMPARATIVE PERSPECTIVE

THOMAS C. BRUNEAU

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19 ABSTRACT (Continue on reverse if necessary and identify by block number) The Report analyzes the Brazilian experience in formulating a new constitution in 1987-1988 in comparative perspective with Portugal and Spain. It is demonstrated how the political actors in Brazil participated in the Constituent Assembly in order to ensure their interests in the basic document. Due to the political dynamics of the period and the severe economic crisis, the Assembly was extremely open, or porous, and the resulting document is long (315 articles), detailed, and extremely ambitious. There is some question, however, whether the political structures and economic resources will allow for a substantial implementation of the Constitution.			
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In this paper I assess the prospects for democratic consolidation in terms of the 1988 Constitution, and am unfortunately not as sanguine as most of the Brazilian political commentators. I want to convey here a sense of the context in which the Constitution is to be implemented; this will not be in terms familiar to Americans whose two hundred year old constitution is sacrosanct. Initially it is obvious that constitutions have been replaced in Brazil with a certain frequency, and the last democratically elaborated constitution, that of 1946, was overturned by the military coup in 1964. It is also relevant that the new Constitution is promulgated at a time of unprecedented economic crisis, thus creating serious political implications. The economy has been in recession for most of the decade, the country's debt has reached approximately \$115 billion, and inflation in 1988 was almost 1000%. There is real question whether the stabilization plan of 15 January 1989, the third since 1985, will be any more successful than the last two which failed. Nineteen eighty-nine is a year of presidential elections, the first direct elections for the president since 1960. The potential for a radicalization or polarization is high if the results of the first elections held under the new Constitution are considered. In the municipal elections of 15 November 1988, the government party, the PMDB (Brazilian Democratic Movement Party) carried Salvador, Bahia, as its most important state capital. The most important capital won by the other party in

government, the PFL (Liberal Front Party), was Recife, also in the Northeast. The parties most active in opposition to the federal government, the PT and PDT, carried the key capitals of Sao Paulo, Rio de Janeiro, Porto Alegre, and Curitiba. Even a splinter from the PMDB, the PSDB, won in an important capital, Belo Horizonte in Minas Gerais. The economic and political context of post-promulgation Brazil is extremely unpromising; such instability may be so perilous as to preclude the implementation of the new Constitution.

To better understand the likelihood of democratic consolidation through the Constitution, I will review the process whereby it was formulated and the roles of important political actors. This review will enable us to appreciate the interaction of political forces at this stage of Brazil's democratic transition and assess the factors which affect the implementation of the Constitution in these perilous times. It may be useful to provide first some comparative evidence on democratic consolidation in which new constitutions figured centrally in the process.²

Comparative Cases

The most comparable cases to Brazil's experience are the new Iberian democracies which began their transitions at roughly the same time (mid-1970s) and sought to cap the transitions with new constitutions. Despite obvious external similarities, however, the implications arising from the processes and resulting documents in the three cases are very different.

In Portugal the transition was initiated by a coup on 25 April 1974, which brought on a revolution. In accord with commitments by the Armed Forces Movement in making the coup, elections were held exactly one year later for a Constituent Assembly. In these elections the Socialist Party (PS) and the Portuguese Communist Party (PCP), both espousing Marxism at that time, together had a majority of 151 seats in the 250 member Assembly. The Assembly was constrained by the terms of a Pact with the Armed Forces Movement which guaranteed them a continuing role in politics. The deliberations of the Assembly were also influenced by the fervor of the period, when at times it appeared as though the process would be superseded by civil and military revolutionary groups. The resultant document which was promulgated on 25 April 1976 reflects these three conditioning factors. The Armed Forces Movement was given a supervisory role in government, and the document's 315 articles stipulate in extensive detail that Portuguese economy and society would continue to be transformed on the road to socialism. In sum, the Portuguese Constitution of 1976 was extremely programmatic and socialistic.³

Due to external economic factors arising from Portugal's relative underdevelopment, combined with domestic political dynamics, the 1976 Constitution became a political issue soon after promulgation. It was seen by private entrepreneurs as an obstacle to development and by the political right as an impediment to their attaining power. When the right, in the form of the Social Democratic Party (PSD) and the Social Democratic Center

Party (CDS), obtained a majority in the Parliament after 1979, one of their main goals, and thus a central political theme, became revision of the constitution. This was finally achieved in September 1982. However, as the revision was made to the detriment of the powers of the incumbent President Eanes, it was destabilizing for government and the party system. And, as it required support from the Socialist Party to achieve the necessary two-thirds vote, it changed the socialistic economic and social content only slightly. The revision, like the original document, satisfied only limited sectors of the political elite. Consequently, soon new demands were made for constitutional revision and continue to be made until the present. By elaborating such a detailed and programmatic document which can only be comprehended in the revolutionary context of the time, the Portuguese have ensured that some sections cannot be implemented, others are irrelevant, and demands for revision will continue. While maintaining the topic of the constitution in the public view, it does little for establishing the legitimacy of the document.

In Spain the situation was very different. The Constitution signed by King Juan Carlos I on 27 December 1978 finalized a transition characterized by compromise and consensus. This constitution stands in marked contrast to the Constitution of the Second Republic of 1931 which, like the Portuguese Constitution of 1976, was a document 'imposed by one political tendency upon the rest of the country....' ⁴ Whereas in Portugal the Socialists

and Communists attempted to guarantee the revolutionary changes and momentum by enshrining them in the Constitution, in Spain the political elites sought to avoid the polarization of the Second Republic culminating in the civil war of 1936-39.

The Constitution was written by the Cortez between August 1977 and October 1978, and ratified in a referendum in December 1978. The Constitution represents the end of the transition led by Prime Minister Adolfo Suarez since his appointment by the King in July 1976. Due to the composition of the Cortes where no party or tendency held a majority, and the general agreement to avoid polarization, the defining characteristic of Spanish constitution-making was what Gunther has termed the 'politics of consensus.' More precisely, the elites engaged in consociational strategies whereby they sought compromises on potentially conflictive issues, negotiations were conducted through 'summit diplomacy' among the highest-ranking political leaders, the talks were conducted in strict secrecy, and the constraints placed on public debate over these issues in the Cortes were oriented towards depoliticizing them.²

The challenge facing the Spanish political elites was probably more serious than that facing the Portuguese insofar as Spain has been characterized by more conflict, particularly regarding regional autonomy and Church-state relations. Because of the trauma of the civil war which ushered in forty years of rule by Francisco Franco, the elites were well aware of the need to compromise. The Constitution is composed of 169 articles; its

length is due not to extensive socio-economic sections, but rather to the delimitation of political processes to mollify competing political groups. This political process has resulted in an enviable situation where no significant political groups challenge the legitimacy of the regime although the Constitution is somewhat less acceptable to the Basques. The Portuguese were less forward (or backward) looking: there had been no civil war and they wanted to consolidate the profound changes brought about by the demise of the Salazar-Caetano regime. Much of what they wanted to consolidate, however, was economically unrealistic and politically limited to a specific time and conjuncture. When these changed, ascendent political forces demanded that the Constitution be amended; these demands continue.⁶

Brazil's Negotiated Transition

On first examination it appears that Brazil's experience in writing a new constitution should parallel Spain's in that the transitions from authoritarian to democratic regimes are similar.⁷ The Brazilian transition was initiated from above as was Spain's, took place in a country which was transformed from the time the military took power in 1964, involved negotiations between the regime and the opposition more or less centered on the PMDB which was also something of a front like Adolfo Suarez' UCD, and included 'understandings' on the extent of tolerable change which were similar to if less formal than the Pacts of Moncloa.⁸

The most obvious differences concern the decade-long span of the

Brazilian transition, its escape from control of the regime in 1984, and the absence of a king.

Symptomatic of these differences is the manner in which constitutional change entered the political agenda during the transitions. In Spain, Franco had passed seven basic laws over thirty years which overlapped and never provided a coherent constitutional framework for politics.* A constitution was thus required to replace the personal rule of Franco and institutionalize the emerging democratic system. In Brazil it was more complicated.

In principle the Constitution of 1967, substantially amended by the military in 1969 [and thus most consider it a new constitution], could have been exorcised of its more authoritarian elements and retained as the document for a democratic Brazil. After all, in the political transitions of Argentina and Uruguay both countries returned to their earlier constitutions which had been either amended or superseded temporarily by the military governments. It was in the context of Brazil's long drawn out political transition that the demand for a new constitution emerged; it would later re-emerge when the transition took a different turn.

The MDB first focused seriously on a new constitution in response to the April Package of 1977, although the theme had briefly emerged within the party in 1971. In the April Package, President Geisel utilized the Fifth Institutional Act to change the constitution in order to reemphasize control over the

transition in line with his and not the opposition's priorities and timetable. It became obvious to the opposition that the transition would at best be slow and hesitant. As a prominent leader of the MDB, Fernando Henrique Cardoso replied in 1977 in response to a question on the desirability of focusing on a constituent assembly, "Because the constituent assembly is the means whereby political space can be opened to improve the chances of the majority participating in Brazilian politics. This is the real reason for proposing a constituent assembly... It is simply an effort in the context of a very negative correlation of forces."¹⁰ The MDB then promoted a campaign for a constituent assembly, the first it had promoted outside of election campaigns, since it was founded a decade earlier. The theme appeared in MDB (and post-1979 PMDB) documents up to and including Tancredo Neves's speech on being elected president by the electoral college on 15 January 1985. For Neves a new constitution would finalize the transition from the military to civilian regime.

In 1977, other organizations also in opposition to President Geisel and the regime promoted the theme of a new constitution. The theme became the unifying force for the opposition to demand a more rapid and profound political transition. In August 1977 the Order of Brazilian Lawyers (OAB) published a document entitled "Carta aos Brasileiros" which advocated a return to the state of law. In the same year the National Conference of Brazilian Bishops (CNBB) published "Exigencias Cristas de uma

Ordem Politica" which advocated a similar goal. A general consensus gradually developed which focused on the need to replace the documents of the military regime with a new constitution both in order to signify a break with the military and to consolidate a democratic regime.

The Popular Movements and the Constituent Assembly

Following the death of Tancredo Neves in April 1985 and the inauguration of Jose Sarney, the need to make a break with the past via a new constitution seemed less imperative. A government was formed based on the PMDB and the PFL which seemed reasonably comfortable utilizing even some of the authoritarian measures of the 1967/1969 constitutions. However, in the context of the conciliated transition, the coming to power of the PMDB, and the fear that little would be changed, other opposition elements began to focus on the constituent assembly as the way to make the break with the past. These elements included the OAB, CNBB, the Workers' Party (PT), some unions, and a wide variety of grass roots organizations. Many of these so-called popular movements came together in the umbrella Plenario Pro-Participacao Popular na Constituent (Plenary), which was closely linked to the Church and grass roots groups.¹¹ As stated by one of their proponents, "The convocation of a Constituent Assembly is, today, a natural and necessary consequence of the campaign [in 1984] for direct elections. It is necessary to complete this campaign and, mainly, extend its goal. We want not only the direct election of

the president of the Republic, but also to open spaces in order to begin a cycle of profound change in the economic and social policies of the regime, and mainly, to bring an end to the military regime itself."¹²

The Plenary, and its component parts, promoted political mobilization and the development of awareness through publications, meetings, press campaigns, and pressure group techniques. They made five demands regarding a constituent assembly, whereby the prospects for making the break with the past would be maximized.

The first was a change in state representation prior to calling elections to a constituent assembly. Each state is entitled to three senators, regardless of population. In the Chamber no state can have fewer than eight deputies nor more than sixty. This means that the more industrialized, and populated, states in the South are underrepresented and the underdeveloped states of the North and Northeast, where clientelistic politics prevail, are overrepresented. Thus a constituent assembly elected according to the actual system of representation would seriously underrepresent the more modern states.¹³ Also related, and criticized by some scholars as well as the popular movements, is the system of representation where the voters elect on a state-wide and not district basis. The relationship between the voters and their representatives is thus distant; this situation is aggravated by the long tenure of senators (eight years) and deputies (four). The members of the Plenary argued that without change in the system and numbers of representation

the result would be a distant and unrepresentative constituent assembly.

The second point involved the elimination of the entulho autoritario (authoritarian rubbish) prior to calling elections. This legislation was left over from the military regime and included the Law of National Security, the Press Law, laws prohibiting strikes, and the like.¹⁴ The Congress had not changed any of this legislation after mid-1985, and a good deal of it was used by the Sarney government. Even though the legislation might not have been used to control the elections for and deliberations in a constituent assembly, the Plenary argued that its mere existence restricted the independence of the constituent process.

Thirdly, the Plenary argued that the constituent assembly be called exclusively to frame a new constitution and its members need not belong to political parties; they could run as independents. They assumed that the exclusive constituent assembly would be disbanded after writing the constitution, and professional politicians would avoid it. Independents would open up possibilities for broader representation. The Plenary sought to allow for the widest representation possible thereby linking the lower classes to the new constitution.

The fourth point sought to promote further popular involvement, and thus the legitimacy of the document among the public. The Plenary wanted a plebiscite - if not for separate sections of the constitution at least for the document as a

whole.

And, lastly, the members of the Plenary also wanted the people to 'write their own constitution,' at least to some degree. They specifically opposed the creation of a group of notables whose mandate it was to prepare a draft constitution for the president. This idea had originated with Tancredo Neves and was expanded by President Sarney, who appointed a group of 51 notables from academia, the arts, and the legal profession, in mid-1985. In the view of the Plenary, this group overwhelmingly represented the elite and its very existence would stifle popular creativity.

Taken together, the implementation of these five points would, according to the Plenary, promote involvement in politics by the lower classes, encourage them to pressure the constituent assembly for a document guaranteeing their interests, and allow for an accurate representation of interests in Brazilian society.¹⁸

Despite a high level of mobilization and publicity, none of the demands were adopted. President Sarney proposed a project to the Congress on 28 June 1985 which would amend the constitution and call a National Constituent Assembly composed of the two houses of Congress to begin meeting on 31 January 1987. In late November, the Congress passed legislation in line with this project whereby the Congress to be elected on 15 November 1986 would also serve as the constituent assembly. The system of representation was not changed, the authoritarian legislation

remained, and candidates had to be members of political parties. A proposal had been formulated in a congressional committee headed by a PMDB deputy from Sao Paulo, Flavio Bierrenbach, which would have allowed the voters to decide by plebiscite whether the constituent assembly would be in the Congress or exclusive, and provided for other plebiscites. The Plenary was very much involved in this proposal. It was, however, defeated in committee by the combination not only of the PFL and PDS, but also the PMDB. According to Bierrenbach, though he was never informed, it was understood from the beginning that the constituent assembly would be the Congress.¹⁶

The Commission of notables, known as the Comissao Afonso Arinos after its chairman, met between mid-1985 and late 1986. Initially rejected by the Plenary, it was later criticized by conservatives when it presented its project to President Sarney in September 1986. The project was not only incredibly detailed, with 468 articles, but also nationalistic and populist. Among other things, the Commission recommended a parliamentary system of government and a four-year presidential tenure. President Sarney was not interested in either proposal, received the draft, and buried it.

The prospects for making a break through the constituent assembly thus appeared increasingly less promising. Virtually none of their proposals were adopted, and the overall theme of the constituent assembly received little attention in the media. In the general elections of 15 November 1986, the constituent

assembly was downplayed and attention, instead focused on the election of the state governors. In these elections the PMDB did extremely well winning 22 of 23 governorships and receiving a majority of 302 seats in the 559-member Congress. The PFL, also involved in government, came in second with 135 seats. These results can be explained in large part by the popularity of President Sarney and the PMDB-PFL government during the Cruzado Plan which the President decreed in late February 1986. By this decree inflation was eliminated, prices were fixed, and salaries also fixed but at a relatively high level. The result was a burst of consumer spending, generalized euphoria, and great public acclaim for President Sarney and the government. The popularity was reflected in the election results. President Sarney and the government repeatedly stated their commitment to maintain the Cruzado Plan even though economists indicated it had to be modified, and goods either completely disappeared from stores or consumers had to pay a premium. Two days after the elections the Cruzado Plan was scrapped and President Sarney's popularity with it.¹⁷ The problems of the economy were exacerbated rather than resolved by the Cruzado Plan; indeed, economic problems would serve as the ever-present backdrop for the deliberations of the constituent assembly. Not only did the assembly begin in February 1987 but Brazil also declared a moratorium on paying the interest on its huge foreign debt. It was thus in the midst of economic crisis, declining prestige of President Sarney, and a frustrated Plenary and affiliated

movements that the Constituent Assembly began its work after Carnival 1987.

The Political Context Surrounding Drafting the Constitution

Between 1 February 1987 and October 1988, the Constituent Assembly was the focus of politics in Brazil. The final document of 245 articles plus 70 transitory articles was the result of 330 sessions, 70,000 amendments, and 14,000 speeches. The anticipated completion date was extended four times, and there were several major shifts in the orientation of various sections and finally the whole document. A brief review of some aspects will allow us to better understand the political dynamics and the resultant shifts.

The political scene was fluid, or better complicated, and would become even more so during the negotiations in the Assembly. Unlike Portugal and Spain, no formal pact existed between the regime and the opposition. Prior to his election, Tancredo Neves entered into a series of "understandings" with key elements of the regime, including the military. These were not documented; after his death the tenor of the various understandings would be a matter for speculation and political battle - as evidenced by the fate of the Bierrenbach project.¹⁰ The Assembly began from scratch in that Sarney chose to withhold the Comissao Afonso Arinos draft constitution, and the political parties, except for the PT, had given virtually no attention to the Assembly, and its tasks, prior to its opening in February 1987.¹⁰

The political scene was made even more unstable by the relationship between the executive, Sarney, and the Assembly where the PMDB had a comfortable majority. Sarney of course had been the president of the regime party, Democratic Social Party (PDS), and only joined the PMDB in 1984 when Tancredo Neves developed the strategy to win indirect election in the Electoral College through splitting the PDS. On Neves's death some wanted his contemporary, Ulysses Guimaraes, President of the PMDB to take power. This did not happen because of concern for establishing legitimacy, but Guimaraes did assume the Presidency of the Chamber of Deputies and then of the Constituent Assembly. Thus Sarney held executive power; under the 1967/69 Constitutions this power was tremendous. For example, he decreed the Cruzado Plan in February 1986, did not consult with Guimaraes in advance, and the Congress only had to get around to approve it two months later. Yet Guimaraes would hold more power than any other single individual regarding the Assembly and the new constitution. In a certain sense Brazil became a two phased diarchy: Sarney held power in the present, while Guimaraes sought to define the nature of power in the future.

Conflicts between Sarney and Guimaraes were obvious when the Assembly was convoked; as the former attempted to limit the interim sovereignty of the Assembly, the latter sought to expand it. President Sarney was particularly concerned about his tenure which would be defined by the Assembly. According to the 1967/69 constitutions, as amended, it was six years; Neves had indicated

he would govern for four as the last indirectly elected president, and Sarney initially reiterated Neves's commitment. With his popularity declining at the end of the Cruzado Plan, Sarney came out publicly on 18 May 1987 for a five-year term in order to regain his lost prestige. From then on his main goal would be to inveigle the five years from the Assembly.

In the unicameral Constituent Assembly the PMDB and the PFL totalled 436, or 78% of the 559 seats.²⁰ The PMDB, however, had changed and expanded tremendously since entering government in March 1985. In line with the tradition of flexibility and lack of ideological and organizational coherence of Brazilian political parties, the party was wide open to new members. David Fleischer has shown that the largest political group in the Assembly was not the PMDB but, in terms of 1977 political affiliations, the ARENA (precursor to the PDS as government party) with 217 members. The more original or authentic PMDB had but 212. Of the 298 PMDB members on whom data was available in 1987, 40 were from the PDS in 1983 and another 42 were from ARENA in 1979. Thus rather than a majority of 54% in the Assembly, the PMDB could count only 40% once these latecomers from its right were excluded.²¹ Even if Guimaraes was President of the PMDB, Chamber, and Assembly it did not mean that he, much less Sarney, could assume the Party would vote as directed. This fact made the process that much more complicated.

Other actors beyond the political parties became involved in the constituent process. Traditionally, political parties have

not been the key actors of politics in Brazil. During democratic periods individual personalities have been in the forefront; during the military regime the armed forces as institution are central. Interest representation during both periods has always been less through parties and more via a limited number of organized economic interests.

Although the popular movement did not initially succeed in its goals for the Assembly, the members remained active. After the elections, the eruption of the economic crisis, the decline in Sarney's popularity, and the opening of the Assembly, the CNBB, OAB, some unions, and other movements involved in the Plenary sought to define the issues and then influence the Assembly; still to make a break via the constitution. At the minimum they promoted a momentum to focus attention on the significance of the Assembly and a new constitution. The Assembly would of necessity become the focal point for interests and pressure groups seeking to achieve their competing goals. As the popular movements wanted change, others would have to become involved to secure what they already had. All interests wanted their goals incorporated into the basic charter of the nation. This is particularly relevant as it was clear from the beginning that the new constitution would be long, detailed, and programmatic. At the minimum it was expected to exceed the 312 articles of the Portuguese Constitution of 1976. The deliberations of the Assembly were as long, drawn out, volatile, and polemic as these initial considerations would lead one to anticipate.

Progression and Regression in the Constituent Assembly

In contrast to the experience in 1946 when a 'Grand Committee' drafted a document in four months and the Assembly voted it in another three, the Assembly in 1987 went into what David Fleischer terms a 'total participation mode'.²² The 559 members were divided into eight large committees by content areas to take testimony and draft sections of a working document. The committees were then further divided into three sub-committees. Another committee, the twenty-fifth, was created to systematize and integrate the final reports from the eight committees. Due to the influence of progressives in the PMDB and pressure by the popular movements, the process was extremely open. The committees were open to suggestions by all associations and movements, the debates were held in public, and there was provision for 'Popular Amendments' whereby an item would have to be considered by the twenty-fifth, or Systematization Committee, if it received 30,000 signatures and was supported by three associations. There were finally 122 Popular Amendments which received twelve million signatures.²³ In June the eight committees combined their respective three sub-committee reports into their final reports which went to the 90 member Systematization Committee. The Committee was chaired by Senator Afonso Arinos, and the more powerful position of relator was held by Senator Bernardo Cabral. The Committee enjoyed considerable autonomy as it produced one working draft in July and another in September. The Committee

was dominated by more liberal elements from the PMDB, aligned with Senator Covas, and other parties which had extensive contacts with the popular movements. Further, the progressives were constantly present, whereas the more conservative elements had business interests out of Brasilia and were absent most of the time. Consequently when the Systematization Committee presented the final draft of 351 articles in November there were a number of innovative elements including the following: adoption of a parliamentary system, a mixed electoral system, decentralization of taxing powers to states and municipalities, increases in the powers of Congress thereby diminishing those of the executive, guarantees of extensive labor rights and allowing for expropriation of idle land, and prohibiting public funds for private schools. Whereas future presidential terms were set at five years, Sarney's was shortened to four. The parliamentary system was to be adopted immediately on promulgation of the constitution.²⁴

The economic innovations mobilized business sectors against the draft, and the change in system of government and decrease in tenure incensed Sarney. Under the ruled adopted at the beginning of deliberations, voting by the full Assembly on the Committee draft would be as follows: preference would be given to their version prior to considering amendments; only if it was defeated or lacked the quorum of 280 would amendments be allowed. The opponents to the draft mobilized and formed a conservative inter-party coalition called the 'Centrao' or big center. By bringing

almost all of its members to Brasilia in December it obtained sufficient votes to change the rules governing voting procedures. From then on any amendment with more than the absolute majority of 280 signatures would take precedence in voting. Only if the amendments failed would the Committee's version stand. In late January 1988, the Assembly began voting on the draft which was completed in June. A second stage, during which articles could be eliminated but none added, took place between July and September.

The "Centrao" included not only the PFL, PSD, and PTB but also approximately 100 members of the (expanded) PMDB.²⁰ Whereas the Systematization Committee was fairly cohesive and produced a final draft with innovative elements, the "Centrao" was neither. It was generally conservative but consensus was contingent, depending on the issue at hand. This signified that virtually every article had to be negotiated, and there was no assumption of a majority. Indeed, to further complicate the process, the PMDB was coming apart during the process with the PSDB splinter with 7 senators and 38 deputies founded before the constitution was promulgated in October; in addition, the president of the PFL, Senator Marco Maciel, had already broken with Sarney in September 1987. The already fractured party system thus came apart while lobbies of all types predominated. This is relevant as it encouraged diverse political pressures from all sides on the Assembly and made for an incredible variety of at times bizarre ad hoc alliances.

The Constitution of 1988

The final document reflects, and as we shall see reinforces, the political process involved in its elaboration. President Sarney pulled out all stops in cajoling, threatening, and buying votes to achieve a five-year term in a presidential system. He involved the military ministers, especially Minister of the Army General Leonidas Pires Goncalves, in publicly supporting him, distributed government funds to allies, and bought off others by assigning radio and TV licenses. The two critical votes were on 22 March 1988 which was the first and only time all 559 members were present and voting in the Assembly. The presidential system passed relatively easily as the PDT and PT were in favor of it regardless of Sarney. The five-year mandate barely passed, and after that the "Centrao" was pulled apart by different positions on most issues. The only point of unity after 22 March was in mid-May when the section on agrarian reform was defeated, thereby pushing the situation back beyond the Castello Branco government's Land Statute of 1965. Productive land, even if not fulfilling a social function, cannot be expropriated. Aside from this key area, extensive reforms were included in the Constitution.

The Constitution stipulates a fundamental redistribution of power. The executive, whose powers increased tremendously during the military regime, is weakened in relationship to Congress, and the union is diminished in relation to other levels of government. Decree laws, which became the most common form of passing

legislation during the military regime, and continuing under the civilian government after 1985, must be approved by the Congress within 30 days. The Congress has extensive powers in economic areas such as changing budgetary items and overseeing the process of economic decision-making. Congress must now approve all international agreements, including those on the debt. It also has oversight on the nuclear program. States and municipalities are to receive increased shares of tax receipts. The federal government is restricted in creating new revenue sources and in expanding the public enterprise sector. The Central Bank is prohibited from financing the public sector deficit by printing money.

The Constitution includes provisions for tremendous improvements in human rights and social guarantees with incredibly detailed sections on everything from censorship to maternity leave. Education should benefit as the federal government is obliged to increase its contribution from 13% to 18% of total expenditures. There are also a variety of means of popular participation which, in addition to the vote, include the initiative, plebiscite, referendum, and popular veto. Organized labor benefitted with a 44-hour workweek, a maximum of 8 hours per shift, and unrestricted right to strike. The overall tone of the Constitution is nationalistic, populist, and statist. Foreign firms are proscribed from prospecting and exploitation of the subsoil, and the foreign firms currently involved in mining have five years to cede majority control to Brazilians. The

concept of a "national company" with headquarters and directors in Brazil, or which the owners of most of the capital are Brazilian, is defined with extensive benefits in access to strictly defined markets and a variety of incentives over foreign firms. There are provisions on sports, Indians, the environment, and culture. A few stipulations appear positively weird, especially in the Brazilian context, such as setting a 12% limit on real interest rates and guaranteeing paternity leave.

Because of the major social and economic reforms, and the redistribution of power and wealth between governments and within the federal government itself, Sarney went on national television in late July 1988 and described the first draft as a document that would bankrupt Brazil and make it ungovernable. He urged the Assembly to reject it which would have pushed the process back to the beginning. The day after Sarney's speech Ulysses Guimaraes called for the vote on the first draft which passed with a massive majority of 403 to 13. Voting was completed on the second round on 1 September and promulgation was on 5 October. By this time Sarney was politically isolated, his government consisting largely of the PDS and some old friends.

The 1988 Constitution and Democratic Consolidation

The document produced during twenty months in the 559-member Constituent Assembly is impressive in its scope, detail, and overall orientation. It provides something for everyone in Brazil with the exception of millions of generally poverty-

stricken landless peasants.²⁶ In order to evaluate the chances for its overall implementation we must consider a number of factors. With such a detailed document, particularly one which includes extensive sections on the economy and factors beyond the control of any country such as interest rates, it would be unrealistic to anticipate full implementation. Earlier Brazilian constitutions were not fully implemented nor, for that matter, were sections of the Portuguese Constitution of 1976.²⁷ In addition, it is more appropriate to think of the Brazilian process of formulating a new constitution as open-ended. The work was not completed on 5 October 1988: it is an ongoing process. To even begin to implement this document requires the passing of 314 items of ordinary legislation and 56 of complementary legislation. This process only began in late November, 47 days after the promulgation.²⁸ Further, Article 2 of the transitory items provides for a plebiscite on 7 September 1993 on the form (republic or constitutional monarchy), and the system (parliamentary or presidential) of government. And, Article 3 provides for amendment after five years by an absolute majority of the Congress. In sum, the 1988 Constitution remains somewhat tentative by design of its framers; this is well within the Brazilian tradition of negotiation and conciliation.

Beyond these initial qualifications what are the relevant factors to consider in assessing likely implementation? These can be divided into two different, albeit overlapping categories. First are those emerging from the process, and

verified in the document, which deal with political structures. Second are the more conjunctural factors conditioning the Constitution as it was promulgated.

In the first category are four main factors.

1. Brazil's transition from a military to civilian regime is unique in that the role of the armed forces has diminished minimally, if at all.²⁰ Article 142 stipulates, in part, "Their [the armed forces] purpose is to defend the fatherland, guarantee the constitutionally established powers and - upon the initiative of any of said powers - law and order." This is essentially the same role they have played since the founding of the Republic in 1891. It is important to note that their structures were not diminished by creating, for example, a Ministry of Defense. The National Security Council was replaced by a Council of National Defense but it is merely consultative. The armed forces came through the transition unscathed and began a modernization program with the inception of the civilian regime. They lobbied effectively in the Constituent Assembly and their prominence and prestige increased as President Sarney, with little political base of his own, relied upon them for support. They thus remain at the center of power in fact and in terms of the constitution.

2. The Constituent Assembly/Congress increased its powers while simultaneously reducing those of the executive. Thus even though the proposal for a parliamentary system was defeated, the constitutional powers of the Congress approximate those of some parliamentary or semi-presidential systems. The Congress now has

power but lacks the tradition, means, and possibly commitment to exercise such power responsibly. This may result in the Congress impeding and not initiating necessary legislation.³⁰

3. The process involved in formulating the Constitution did nothing to strengthen political parties which could conceivably increase the ability of the Congress to exercise its powers responsibly. The PMDB and the PFL, who were the main actors due to their overwhelming majority in the Assembly, were so divided in early 1989 they could not agree on presidential candidates. It is significant that there was no change in the Constitution that might strengthen political parties in the future. The earlier legislation pertaining to political parties remained, and the district system of representation was not adopted. These elements, which could result in change in the parties in the future, did not even emerge as pertinent issues in the Assembly. Even the highly unrepresentative number of deputies remained more or less intact with a minimum of eight per state and a maximum of 70.

4. There was also little change in the key area of state-labor relations though labor gained as an interest or class. Key elements from the 1930s have been retained, including the exclusive role of one union in a locale and the obligatory collection of union dues by the state.³¹ A greater percentage of the dues now go to the union which can also collect additional dues. Unions, however, are still dependent on grants of authority from the government and are thus still linked to the state but

have more power in their specific locales.

5. While unions retain a close link with the state, and political parties are fragmented, there was an explosion of new actors involved in politics. The popular movement emphasized direct access to the Assembly via the Popular Amendments and a number of instruments for popular participation were included in the Constitution. It is likely that most of these movements will work at the margins of the parties, though some are affiliated with the PT. Also on the margins are the equally new phenomenon of lobbies. Lobbies of all imaginable variations, from religious associations to ecological groups to business interests worked on the Assembly. Indeed, by one estimate one-half of the members of the Assembly were themselves representatives of lobbies.³² It is likely that lobbies will continue to proliferate now that the access points in the political and financial systems have expanded with redistribution of power from the executive and the union.

Indeed, the process and the final document have resulted in a continuing central role for the military and an almost corporatist relationship with labor and the state. The innovations are either questionable in implementation, as with Congress, or clearly centrifugal in the case of parties, popular movements, and lobbies. It thus appears that the result of the process is a weaker political framework with which to implement the very demanding constitution.

In the second category are two considerations which aggravate

the above. 1. The process of writing the Constitution was so drawn out and polemic that its legitimacy may be doubted from the beginning. Sarney attacked the Assembly for more than a year and then attempted to avoid implementing the Constitution in spirit if not in letter during its first few months. Also, while most interests are guaranteed in the Constitution so are their likely opponents. By guaranteeing so much the Assembly may in fact be guaranteeing nothing.

2. The Constitution comes into effect during an unprecedented economic crisis. The crisis is due in part to the process involved in the elaboration of the Constitution. Sarney maintained the Cruzado Plan until after the 15 November 1986 elections which guaranteed the success of the PMDB, but the economy suffered. He did not implement the Bresser Plan in the second half of 1987 because he feared the austerity measures would further harm his popularity. And he used government resources to obtain votes in the Assembly. The socio-economic orientation of the Constitution diverges from the orientation implemented by the Sarney Government since mid-1988. These grave contradictions in policy orientation do not promote dealing effectively with the problems. The Constitution may thus come to be identified by the people as not only simultaneous with the economic crisis but at least in part its cause.

Conclusion

The Spanish Constitution of 1978 was framed by a relatively

small group of political actors in a process characterized by negotiation involving compromise and resulting in consensus. In seeking to avoid a repetition of the Civil War, they wrote a document that is realistic and legitimate for the vast majority of the population. It is not a politicized issue today and is amended in a regularized manner. The Portuguese Constitution of 1978, amended in 1982, was framed by the whole 250 member Constituent Assembly in which the left held a majority. The members sought to guarantee the revolutionary changes and continue them into the future by inclusion in the Constitution. Instead, economic realities and domestic political changes resulted in simply ignoring some sections of the document and demands for constitutional revision. Despite revision of the political sections in 1982, demands still continue for more revision.

The Brazilian experience in framing a new constitution is closer to the Portuguese, but more extreme. As the transition controlled from above went out of control, so did the Constituent Assembly. Due to the weak political base of President Sarney, the nature and composition of the PMDB, and the pressure of the popular movements and lobbies, there was minimal coherence in the process and in the Assembly itself. The President won on the two items of most interest to him and the right beat down agrarian reform, but the overall tenor of the 1988 Constitution is progressive, populist, statist, and nationalist. This was achieved not by consensus and compromise, as with Spain, but by

simply including virtually everything most groups (with the notable exception of the peasants) demanded. Thus whereas the Spanish Constitution has 169 articles, the Brazilian has 315; it can be argued that due to regional problems the former's would be longer. In contrast to Portugal, which with 312 articles is almost as long as Brazil's, there was no revolution and the left did not have a majority. Rather, some movements wanted to make a break with the past via the Constitution and the largely conservative political actors in the Assembly lacked sufficient coherence to resist.

In Spain the Constitution itself is not a political issue, except for some of the Basques. In Portugal it continues to be, and substantial political instability continued until a majority government was elected in 1987. In Brazil there is less concern about politicization of the 1988 Constitution; rather, it may come to be considered irrelevant due to the lack of fit between its tenor and the economic, political, and reality of the country it purports to guide. It guarantees much but it is unlikely that the economic resources or the political structures will be emerge for its implementation. Rather it is likely that its future, just as its elaboration, will be determined by short-term political goals of competing political elites.

NOTES

1. The reception of the final document was overwhelmingly positive. In its extensive review of the Constitution the liberal weekly newsmagazine Veja, for example, had as the lead title "The Document of the powers of a people" followed by "The Constituent Assembly completes its work and creates the broadest regime of public liberties in the country's history." Shortly after was stated "The fact is that the Constituent Assembly has the authority of the 69 million citizens who voted in 1986, and the new Document is a picture of their sovereignty." Veja, September 7, 1988, p. 32. In a recent paper an ex-Finance Minister and professor of Economics wrote "... Congress just finished writing a new constitution which was freely debated and approved- a constitution that is no one's dream, that is too much conservative for the left, and too much progressist for the right, but that is indeed the best compromise that Brazilian society could eventually produce today. For all these reasons we do have a democratic regime in Brazil, and a new Constitution that, in spite of the faults we may attribute to it, is a positive factor for the consolidation of democracy in Brazil." Luis Carlos Bresser Pereira, "Economic Ideologies and Democracy in Brazil," paper presented to seminar on L'Internationalisation de la Democratie Politique, Universite de Montreal, September 28- October 5, 1988, p. 6.

An English translation of the 1988 Constitution is available in Foreign Broadcast Information Service, (FBIS-LAT-88-233S) Monday, December 5, 1988.

2. It should be emphasized that the focus here is on democratic consolidation about which little has been written. On the earlier stages of political transitions there is abundant material available. For a review of the literature and an argument on how to approach the topic see Thomas Bruneau and Philippe Faucher, "The Analysis of Democratic Transitions" forthcoming in...

3. For more detail on this topic and references to the relevant literature see Chapter 6, "The Constitution of 1976 and its Revision in 1982" in Thomas Bruneau and Alex Macleod, Politics in Contemporary Portugal: Parties and the Consolidation of Democracy (Boulder: Lynne Rienner, 1986).
4. Richard Gunther and Roger Blough, "Religious Conflict and Consensus in Spain: A Tale of Two Constitutions," World Affairs 143, no 4, Spring 1981, p 366. Also on this topic see Richard Gunther, "Constitutional Change in Contemporary Spain," in Keith Banting and Richard Simeon, eds., Redesigning the State: The Politics of Constitutional Change (Toronto: University of Toronto Press, 1985), pp. 42-70; Richard Gunther, "Democratization and Party Building: The Role of Party Elites in the Spanish Transition," in Robert Clark and Michael Haltzel, eds., Spain in the 1980's: The Democratic Transition and a New International Role (Cambridge: Ballinger, 1987), pp. 35-65; and, Andrea Bonime-Blanc, Spain's Transition to Democracy: The Politics of Constitution-making (Boulder: Westview, 1987).
5. Gunther and Blough, p. 402.
6. For an eloquent appeal for revision by ex-prime minister Francisco Pinto Balsemao see, "The Constitution and Politics: Options for the Future," in Kenneth Maxwell, ed., Portugal in the 1980's: Dilemmas of Democratic Consolidation (N.Y.: Greenwood Press, 1986), pp. 197-232.
7. There is a rich literature on the Brazilian transition. See for example my "Consolidating Civilian Brazil," Third World Quarterly 7, No. 4, October 1985; Wayne Selcher, ed., Political Liberalization in Brazil (Boulder: Westview, 1986); and, Julian M. Chacel, et. al., eds., Brazil's Economic and Political Future (Boulder: Westview, 1988.) Maybe the richest documentation is found in Jose Augusto Guilhon de Albuquerque and Eunice Ribeiro Durham, eds., Simposio: A Transicao Politica. (Sao Paulo: Universidade de Sao Paulo, 1987).
8. The similarities in the 'transitions through transaction' are highlighted in Donald Share and Scott Mainwaring, "Transitions Through Transaction: Democratization in Brazil and Spain," in Wayne Selcher, 1986, pp. 175-216.
9. These are discussed in Bonime-Blanc, p. 19.
10. Movimiento August 1977.
11. In late 1985 and the first half of 1986 I reserched on the Plenary and its constituent groups through their documents, interviews, and attendance at meetings. In May 1988 I returned for more interviews with these elements and other political actors.

12. Helio Bicuco, 'O verdadeiro caminho da democracia,' in Raymundo Faoro, et. al., Constituinte e Democracia no Brazil Hoje (Sao Paulo: Brasiliense, 1985), p. 186.

13. According to a weighting scheme developed by Raymundo Faoro, a voter in Rio de Janeiro has a value of 1; this drops to .6 in Sao Paulo; in Maranhao it is 1.8 and 12.1 in Acre. Raymundo Faoro, 'Constituinte: a verdade e o sofisma,' in Faoro, ed., 1985, p. 13. For an historical overview and analysis of the topic see Maria d'Alva Gil Kinzo, Representacao Politica e Sistema Eleitoral no Brasil (Sao Paulo: Simbolo, 1980). A more recent analysis of this and broader themes of the parties is Glaucio Dillon Soares, Colegio Eleitoral, Convencoes Partidarias e Eleicoes Diretas (Petrópolis: Editora Vozes, 1984).

14. This legislation is discussed in Dalmo Dallari, 'Entulho Autoritario: Como nos velhos tempos,' in Barbara Freitag, et. al., Nova Republica: Um Balanco (Sao Paulo: L & PM, 1986), pp. 155-67.

15. These five themes figure largely in CEDI, Dossie Especial: Constituinte and were dealt with in most of the newsletters in 1985-86 of the Plenary. For a historical perspective and a good summary on most of the themes see Marilia Garcia, O Que e Constituinte (Sao Paulo: Editora Brasiliense, 1985).

16. Interview with Deputy Flavio Bierrenbach on May 28, 1986 in Brasilia. The extensive hearings of the committee are available in the Diario de Congresso Nacional of November- December 1985. (Comissao Mista, incubida de estudo e parecer sobre as Propostas de Emenda a Constituicao nos 43, 44 e 52 de 1985, que 'convocam a Assembleia Nacional Constituinte').

17. In early November 1986 80% of the respondents expressed confidence in the President. By March 1988 this figure was 33%. Or, whereas in the latter month 16% considered his administration 'good' or 'excellent' some 43% considered it 'bad' or 'lousy'. Cited in Orjan Olsen and Silvia Cervellini, 'Transition to Democracy in Brazil: The Search for Leadership and Principles' a report from the Instituto Brasileiro de Opiniao Publica e Estatistica Ltda, presented to the WAPOR/AAPOR Conference, Toronto, May 18-22, 1988.

18. On Neves' understanding with the military and the PFL see the report on a speech by Senator Fernando Henrique Cardoso in Folha de Sao Paulo May 19, 1986 and David Fleischer, 'From Non-Competitive to Competitive Elections to the 1987/88 Constituent Assembly: Brazil's Attempt to Finalize the Political Transition' a paper for the Academia de Humanismo Cristiano, Santiago, Chile, 23 March 1988, p. 36.

19. The draft prepared for the PT was a contribution to encourage discussion of the new constitution, but by representing a major break with the past was not a document on which any initial consensus could be built. See Fabio Konder Comparato, Muda Brasil: Uma Constituicao para o Desenvolvimento Democratico (Sao Paulo: Editora Brasiliense, 1986).

20. The numbers for the other parties are as follows: PDS- 40, PDT- 25, PTB- 18, PT- 16, and seven minor parties, including two Communist parties, 24.

21. David Fleischer, "From Non-Competitive to Competitive Elections...", p. 39. Fleischer provides in this paper extensive details on the background on the members of the assembly. On the flexibility of the parties see Bolivar Lamounier and Rachel Meneguello, "Partidos politicos e consolidacao democratica: O caso Brasileiro" (mimeo) IDESP, 1986. On the background of the PMDB see Maria d'Alva Gil Kinzo, "An Opposition Party in an Authoritarian Regime: The Case of the MDB (Movimento Democratico Brasileiro) in Brazil, 1966-1979" D.Phil. Thesis, Oxford, 1985.

22. David Fleischer, "The Impact of the 1988 Municipal Elections on Brazil's 1989 Presidential Election", p. 13. (mimeo) A paper prepared for the Institute of Interamerican Studies at the University of Miami, February, 1989.

23. On the overall process involved see the description by ex-deputy Joao Gilberto Lucas Coelho, "O Process Constituinte de 1987," in Vania Lomonaco Bastos and Tania Moreira da Costa, eds., Constituinte: Questoes Polemicas (Brasilia: Caderno CEAC/UNB, 1988), pp. 9-17. The documentation on the popular amendments is found in Comissao de Sistematizacao, Emendas Populares in two volumes (Brasilia: Assembleia Nacional Constituinte, 1987).

24. David Fleischer, "From Non-Competitive to Competitive Elections....", pp. 58-9. Veja and Folha de Sao Paulo were also used to follow the overall process.

25. One analyst gave the following composition for the Centrao: PMDB- 141, PFL-117, PDS-27, PTB- 16, PDT-5, PS-5, and PDC-4. Benicio Viero Schmidt, "Transicao Politica e Crise de Governabilidade no Brasil," in Vania Lomonaco Bastos and Tania Moreira da Costa, p.40.

26. It may be worth noting that one of the Popular Amendments for agrarian reformed received more signatures than all the other 121 amendments; 1,200,000.

27. On different levels of implementation of the Portuguese Constitution see Jorge Miranda, Manual de direito constitucional, vol. I (Coimbra: Coimbra Editora, 1982), pp. 330-31 and on the non-implementation of sections of Brazilian constitutions see

Tercio Sampaio Ferraz Junior, Constituinte: Assembleia, Processo, Poder (Sao Paulo: Editora Revista dos Tribunais, 1985).

28. The lack of complementary legislation was given for the manner in which the armed forces put down the strike in mid-November at the National Steel Company. Without such legislation the armed forces acted in line with 'already proven means'. See Folha de Sao Paulo November 27, 1988.

29. For an excellent comparative analysis see Alfred Stepan, Rethinking Military Politics: Brazil and the Southern Cone (Princeton: Princeton University Press, 1988) and specifically on Brazil one of the best articles is Walder de Goes, "Militares e Politica. Uma Estrategia para a Democracia," in Fabio W. Reis and Guillermo O'Donnell, eds., A Democracia no Brasil: Dilemas e Perspectivas (Sao Paulo: Editora Vertice, 1988), pp. 229-55.

30. The unwillingness of the Congress to support some of the key proposals of the executive for the new economic plan in January 1989 can be seen as evidence of this. They rejected the proposal for privatizing state-owned enterprises and another proposal concerning abolishing some of the ministries was not approved due to a lack of quorum. FBIS-LAT February 16, 1989, p. 31. It should be noted, however, that the President may have been acting unconstitutionally in declaring the plan under Article 62 on provisional acts when much of the plan was clearly intended to be permanent.

31. On the close links between the state and unions see Amaury de Souza and Bolivar Lamounier, "Governo e Sindicatos no Brasil: A Perspectiva dos Anos 80," Dados 24, no. 2, pp. 139-59.

32. Interview with a consultant to lobbies in Brasilia on May 16, 1988. Veja gave coverage to some action by business lobbies. See for example July 27, 1988, p. 35 on the involvement by different types of business groups.

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